* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 21st November, 2007

Crl.M.C. No. 97/2006

\# **Laxmi Gupta** .....Petitioner

! Through Mr. Deepak Tyagi, Advocate

versus

$ **Sunil Kumar Day & Ors.** ..... Respondents

^ Mr. Sunil Kumar Day & Ms. Niti Day, Respondents no. 1 & 2 in person.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

The present petition under Section 482 of the Code of Criminal Procedure, 1973 is filed by the petitioner praying for setting aside of the order dated 13.09.2005 passed by the learned Additional Sessions Judge in Criminal Revision no. 7/2005 whereby the revision petition of the respondents no. 1 & 2 herein filed by them against the order dated 30-10-2004 of the Metropolitan Magistrate rejecting the report of the police seeking the closure of the case registered against them on the complaint of the petitioner for the offences under Section

323/354/34 of Indian Penal Code was allowed.

2. The case of the petitioner-complainant is that her husband is the tenant of the respondent no. 1 and in order to get the premises vacated, respondents no. 1 and 2, who are husband and wife, had been indulging in many illegal acts and have been picking up quarrels on one pretext or the other with her. It was alleged in her complaint that on 02.08.2001, respondents no. 1 & 2 along with three other accomplices started demolishing the boundary wall of the courtyard of the tenanted premises and on her objecting to the said act of the demolition the respondents along with their accomplices started beating and abusing her and tore her blouse. The police registered FIR bearing no. 534/2001 for the offences under Sections 323/354/34 of Indian Penal Code in respect of that incident and in retaliation a cross case vide FIR no. 535/2001 under Sections 451/427/34 of Indian Penal Code was registered at the instance of the respondents against the petitioner and her husband because of the relations of the respondents with the 'high ups' of the police department.

3. The police after investigating the matter filed its final report dated 01.02.2002 under Section 173 of the Code of Criminal Procedure, 1973 in the Court of area Magistrate requesting for cancellation of the afore said FIR No. 534/2001 registered against the respondents herein. The petitioner-complainant filed her protest petition and the learned Metropolitan Magistrate vide order dated 30.10.2004 turned down the request of the police for cancellation of FIR and

instead took cognizance and summoned both the respondents herein. Aggrieved by the said order of the learned Magistrate, respondents no. 1 & 2 filed a Criminal Revision. The learned Additional Sessions Judge after hearing the counsel for the State as well as the counsel for the petitioners (respondents no. 1 & 2 herein) vide order dated 13-09-05 allowed their Revision Petition (being Crl. Rev. No. 7/2005) and set aside the impugned order of the learned Magistrate rejecting the cancellation report and discharged the accused, respondents no. 1& 2 herein.

4. Aggrieved by the said order dated 13.09.2005 discharging respondents no. 1 & 2, the petitioner has filed this petition which has been resisted by the respondents, respondent no. 1 appeared in person and submitted that he did not require the services of any lawyer and so he presented his own case and also on behalf of his wife. From the side of the petitioner however her counsel argued the matter.

6. Learned counsel for the petitioner's main argument was that the petitioner despite being the aggrieved party was not even impleaded as a party in the revision petition by the present respondents and even the learned Additional Sessions Judge did not summon her despite the fact that when closure report was filed in the Court of the Magistrate by the police she was called by the Magistrate and then she had filed her protest petition which was mentioned in the Magistrate's order also. Respondent no. 1, on the other hand, submitted that a false case was foisted upon him and his wife by the petitioner and the police had

rightly sought closure of the case and the Revisional Court was fully justified in allowing their revision petition without issuing any notice to the present petitioner as she was not supposed to be given any notice of the revision petition.

7. I find force in the contention of the learned counsel for the petitioner. The learned Additional Sessions Judge should not have reversed the Magistrate's order which was in favour of the complainant without even issuing notice to the complainant, petitioner herein. Learned Magistrate upon hearing the petitioner as well as the APP for the State had not accepted the cancellation report and took cognizance of the offences which the petitioner-complainant had claimed to have been committed by the accused. In these circumstances, the impugned order of the learned Additional Sessions Judge has definitely resulted in denial of justice to the complainant-victim who was at least entitled to be heard before declaring her complaint to be false. The learned Additional Sessions Judge had observed in the impugned order that the complaint against the accused was 'absolutely false'. This could have been said only after giving hearing to the present petitioner.

8. In view of the foregoing, this petition is allowed and the impugned order dated 13.09.2005 passed by the learned Additional Sessions Judge is set-aside whereby the accused-respondents no. 1 & 2 were discharged. The matter is remanded back to the learned Additional Sessions Judge which shall now be taken up by the Revisional Court/Successor Court on receipt of this order and shall be disposed of afresh after hearing the complainant, the accused and the State after

giving them notice of the date of hearing.

P.K.BHASIN,J

November 20, 2007
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